

### REMARKS

1. Claims 1, 3, 5-7, 9-13, 15-17, 19-21, 23, 25-27, 29-33, 35-37 and 39-46 are pending and stand rejected. This communication amends claim 1.

Reconsideration of this application is respectfully requested.

2. Claim 1 has been amended so that the third occurrence of “the first plurality of teeth” now recites “the second plurality of teeth.” Accordingly, withdrawal of the objection to claim 1 is respectfully requested.

3. Claims 1-3, 10-13, 20, 21, 23, 30-33, 40, 41, 45 and 46 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,436,101 to Hamada.

Claims 1, 11, 21 and 31 recite “the first plurality of teeth all disposed in a first plane...the second plurality of teeth all disposed in a second plane...a body thickness measured between the first and second planes that continuously decreases from the anterior end to the posterior end.”

Claims 45 and 46 recite “the first plurality of teeth all disposed in a first plane...the second plurality of teeth all disposed in a second plane; and the body having a thickness measured between the first and second planes, the thickness continuously decreasing from an anterior-most pair of the first and second plurality of teeth to a posterior-most pair of the first and second plurality of teeth.”

The examiner relies on the rasp shown in FIG. 44 of Hamada to reject independent claims 1, 11, 21, and 31. The examiner does not specifically mention independent claims 45 and 46 in the rejection. In any case, the rasp shown in FIG. 44 of Hamada has a body thickness measured between first and second convex rasp surfaces 507 and 521, which is different from the claimed

invention, which has a body thickness measured between the first and second planes that continuously decreases from the anterior end to the posterior end. In further contrast to the claimed invention, the body thickness measured between the first and second convex rasp surfaces 507 and 521 continuously increases to a maximum or near maximum thickness LLL and then continuously decreases.

The examiner further contends, in the examiner's "Response to Arguments," that the implant shown in the side view of FIG. 17 is the claimed instrument or system for distracting a disc space between adjacent vertebrae and simultaneously preparing endplates of the vertebrae. Hamada, however, does not expressly or inherently describe that the implant shown in FIG. 17 is for distracting a disc space between adjacent vertebrae and simultaneously preparing endplates of the vertebrae. In fact, Hamada discloses a separate distractor in FIG. 1 for distracting the disc space between adjacent vertebrae and a separate rasp in FIG. 35 for removing cartilage material from the bone plates of the spine. Thus, Hamada does not disclose, teach or suggest the subject matter recited in claims 1, 11, 21, 31, 45 and 46. Accordingly, claims 1, 11, 21, 31, 45 and 46 are allowable over Hamada.

Dependent claims 3, 10, 41; 12, 13, 20; 23, 30; and 32, 33, 40, depend directly or indirectly from respective amended independent claims 1, 11, 21, 31 which are allowable over Hamada. For at least this reason, these claims are also allowable over Hamada.

In view of the foregoing, withdrawal of this rejection is respectfully requested.

4. Claims 9, 19, 29 and 39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hamada.

Claims 9, 19, 29 and 39 depend directly or indirectly from respective claims 1, 11, 21, 31

and therefore require the above-described features, which are not disclosed, taught or suggested by Hamada. Accordingly, withdrawal of this rejection is respectfully requested.

5. Claims 5-7, 15-17, 25-27, 35-37 and 42-44 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hamada in view of U.S. Patent No. 5,432,365 to Waldman.

Claims 5-7; 15-17, 42; 25-27, 43 and 35-37, 44 depend directly or indirectly from respective claims 1, 11, 21, 31 and therefore require the above-described features, which are not disclosed, taught or suggested by Hamada in view of Waldman. Accordingly, withdrawal of this rejection is respectfully requested.

6. The undersigned attorney conducted a telephone interview with the examiner, Candice Stokes, on June 23, 2005, to discuss the differences between Hamada and the claims. The examiner acknowledged these differences and agreed to re-evaluate her position with regard to Hamada, perform a new prior art search, and reissue the Office Action or allow the claims.

When no communication regarding the re-evaluation was received from the examiner, the undersigned attorney conducted a second telephone interview around the last week of July with the examiner. The examiner stated during this interview that she was still planning to re-evaluate her position with regard to Hamada.

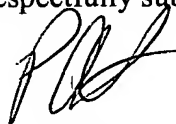
The undersigned attorney conducted a third telephone interview with the examiner around the last week of August when still no communication regarding the above had been received from the examiner. The examiner indicated during this interview that she would not be taking any additional action in the application until she received a response to the current Office Action. The examiner further indicated that she would still re-evaluate her position regarding

Hamada in accordance with the June 23, 2005 telephone interview, when she received the response to the current office action.

7. Favorable reconsideration of this application is respectfully requested as it is believed that all outstanding issues have been addressed herein and, further, that claims 1, 3, 5-7, 9-13, 15-17, 19-21, 23, 25-27, 29-33, 35-37 and 39-46 are in condition for allowance, early notification of which is earnestly solicited. Should there be any questions or matters whose resolution may be advanced by a telephone call, the examiner is cordially invited to contact applicants' undersigned attorney at his number listed below.

8. The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17, which are associated with this communication, or credit any overpayment to Deposit Account No. 50-2061.

Respectfully submitted,



Paul A. Schwarz  
Reg. No. 37,577

Duane Morris LLP  
P.O. Box 5203  
Princeton, NJ 08543-5203  
(609) 631-2446 (phone)  
(609) 631-2401 (fax)